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March 1, 2000

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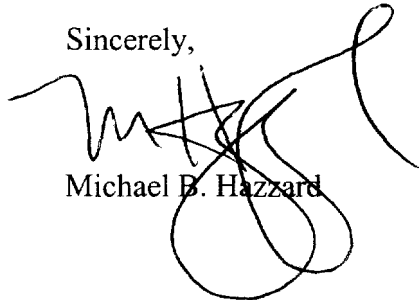
Re: GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee for Consent to  
Transfer of Control, CC Docket No. 98-184

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and six copies of  
the Comments of Allegiance Telecom, Inc.

Would you kindly date-stamp the additional copy provided and return the same to the  
bearer. Thank you for your assistance.

Sincerely,



Michael B. Hazzard

Enclosures

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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**MAR 01 2000**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
 )  
GTE Corporation, Transferor, and )  
Bell Atlantic Corporation, Transferee )  
for Consent to Transfer of Control )

CC Docket No. 98-184

**COMMENTS OF  
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. ("Allegiance"), by its attorneys, hereby submits its comments in response to the Public Notice (DA-00-165) in the above-captioned proceeding. The Public Notice invites interested parties to comment on the January 27, 2000 Supplemental Filing of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") regarding the proposed merger of those companies.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Allegiance is a competitive local exchange carrier ("LEC") based in Dallas, Texas that provides small and medium-sized businesses with a full array of services, including local, long distance, high-speed data, digital subscriber line, and Internet access services. Allegiance currently operates in 20 markets and plans to offer its services in at least 36 major metropolitan areas in the United States by mid-year 2000. Allegiance presently offers service in the Bell Atlantic and GTE service territories, and as such, Allegiance has a direct interest in ensuring that any proposed merger between Bell Atlantic and GTE is consistent with the Communications Act of 1934, as amended ("Act"), the Commission's implementing rules, and the public interest.

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<sup>1</sup> *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, Supplemental Filing of Bell Atlantic and GTE, CC Docket No. 98-184 (filed Jan. 27, 2000) ("Supplemental Filing").

Allegiance does not oppose the merging of Bell Atlantic and GTE. Indeed, this merger presents a unique opportunity for the Commission to utilize its statutory authority to foster the emergence of local competition in areas presently served by GTE – a company that, in Allegiance’s view, has lagged behind the Bell operating companies in delivering to consumers the benefits of the Telecommunications Act of 1996. Doing so, however, requires substantial enhancement of the merger conditions proposed by Bell Atlantic/GTE in its Supplemental Filing. Specifically, Bell Atlantic/GTE should commit to implement the “best practices” of Bell Atlantic’s wholesale group for operations support systems (“OSS”) interfaces and carrier-to-carrier performance standards throughout the combined company’s service territory, rather than maintain two separate, disparate sets of standards. In addition, given the unique section 271 aspects related to GTE’s interLATA network, Allegiance recommends that the Commission require Bell Atlantic/GTE to retain an independent auditor to ensure that the divestiture of the necessary interLATA assets is complete prior to the close of the merger.<sup>2</sup> By taking these steps, the Commission will ensure that the merger of these companies is consistent with the public interest.

**II. THE COMMISSION HAS AUTHORITY TO IMPOSE CONDITIONS ON MERGERS TO ENSURE COMPLIANCE WITH EXISTING LAW AND TO ENSURE THAT PUBLIC INTEREST BENEFITS ARE ACHIEVED**

The Commission repeatedly has made clear that it has ample statutory authority to impose conditions on its approval of a proposed merger to ensure that the transaction will serve the public interest. In approving the Bell Atlantic/NYNEX merger, for example, the

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<sup>2</sup> In these comments, Allegiance makes no judgment regarding the merits of the divestiture of interLATA assets proposed by Bell Atlantic/GTE. Rather, Allegiance submits only that Bell Atlantic/GTE should retain an independent auditor to ensure compliance with any divestiture plan approved by the Commission.

Commission concluded that “[t]he Communications Act permits the Commission to impose [on any proposed merger] conditions as are necessary to serve the public interest.”<sup>3</sup> Section 214(c) of the Act empowers the Commission to attach to licenses “such terms and conditions as in its judgment the public convenience and necessity may require.”<sup>4</sup> Section 310(d) provides that no construction permit or station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the “public interest, convenience, and necessity will be served thereby.”<sup>5</sup> In addition, section 303(r) gives the Commission authority to prescribe restrictions and conditions that may be necessary to carry out the provisions of the Act.<sup>6</sup> In sum, the Commission, where necessary, clearly may attach conditions to a transfer of lines and licenses to ensure that the public interest is served by the proposed transaction.<sup>7</sup>

The Commission has used its merger review authority to ensure, among other things, that a proposed transaction will not violate the Act and that it will yield affirmative public interest benefits. As one example, to ensure compliance with section 271 of the Act, the Commission required Southern New England Telephone and its subsidiaries to cease the provision of

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<sup>3</sup> *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶ 29 (1997) (“*Bell Atlantic/NYNEX Order*”).

<sup>4</sup> 47 U.S.C. § 214(c).

<sup>5</sup> *Id.*, § 310(d).

<sup>6</sup> *Id.*, § 303(r).

<sup>7</sup> *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, ¶ 10 (1998).

originating interLATA services in SBC's in-region territory.<sup>8</sup> Similarly, the Commission conditioned its finding that the merger of SBC/Ameritech was in the public interest on the applicants' commitment to implement a series of measures designed to ensure their implementation of the local competition provisions of the Act.<sup>9</sup> Allegiance submits that the Commission should use its statutory authority in this proceeding to ensure that the merger of Bell Atlantic and GTE produces affirmative public interest benefits for local exchange consumers throughout the company's service territory.

### **III. GTE HAS LAGGED BEHIND THE BELL OPERATING COMPANIES IN DELIVERING TO CONSUMERS THE BENEFITS OF THE TELECOMMUNICATIONS ACT OF 1996**

In the Supplemental Filing, Bell Atlantic/GTE proposes to keep the two companies entirely separate for purposes of the provision of interconnection and related UNE services. In Allegiance's view, permitting the two companies to maintain such an operational firewall between wholesale operations will deny consumers important and substantial public interest benefits that could be realized by requiring Bell Atlantic/GTE to integrate their wholesale divisions.<sup>10</sup> It is well established that Bell Atlantic has one of the most highly developed wholesale operations of any incumbent local exchange carrier ("LEC") in the nation, as borne

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<sup>8</sup> See, e.g., *Applications for Consent to Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-25, Memorandum Opinion and Order, 13 FCC Rcd 21292, ¶ 36 (1998).

<sup>9</sup> See, e.g., *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, ¶¶ 348-49 (Oct. 8, 1999) ("SBC/Ameritech Order").

<sup>10</sup> See, e.g., Supplemental Filing at 19.

out by the Commission's first section 271 grant in New York. In contrast, it is equally well known that GTE has lagged well behind the Bell companies in implementing the local competition provisions of the Act. Unless the Commission requires Bell Atlantic/GTE to integrate wholesale operations, as the combined company will surely do with its retail entities to achieve the benefits cited, it seems unlikely that the "best practices" of Bell Atlantic will flow through to the GTE service territory, leaving consumers in the GTE territory the "have nots" of local competition.

As just one example of the difficulties that exist in competing in GTE's territory, Allegiance notes that GTE does not permit Allegiance to use existing customer loop facilities. Instead, when Allegiance purchases an unbundled loop from GTE to convert a customer to Allegiance's service, GTE insists on making Allegiance and other competitive LECs use different, and often new, cable pairs. In addition to artificially raising the cost of providing competitive service, this GTE practice results in substantial customer outages, which last on average between a half day and a full day. To make matters worse, in instances where no spare copper pairs are available, GTE will not convert customers to Allegiance until facilities become available or are constructed. If construction is necessary, Allegiance is forced to incur "special construction" charges.

Another vexing problem involves GTE's policies regarding providing competitive service to customers served by GTE remote switching units ("RSUs"), which are apparently common in GTE territory.<sup>11</sup> In order to convert a customer served by an RSU, GTE requires competitive

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<sup>11</sup> For nearly half of Allegiance's loop orders to date, GTE has indicated the existence of RSUs.

LECs to submit a Bona Fide Request ("BFR") for the installation of a D4 channel bank, which is a type of loop carrier, to serve the customer. GTE's BFR rate for installing a D4 channel bank is \$21,950.00, and it typically takes GTE about 45 days from the submission of a BFR just to provide a price quote. Because of the extremely high cost and lengthy delay associated with providing competitive service in these instances, Allegiance has been forced to curtail marketing to GTE customers that it believes are served by RSUs.

By virtue of these and similar policies, GTE successfully has thwarted and continues to thwart competitive entry in its territory, and the merger conditions offered by Bell Atlantic/GTE provide no indication that conditions in the GTE territory will change in the bifurcated wholesale world proposed by Bell Atlantic/GTE. The Commission should not let these anti-competitive policies continue. Instead, the Commission should use this opportunity to make the combined company take the steps necessary to provide the benefits of competition to consumers in the entire region, not just the part in Bell Atlantic's existing territory.

#### **IV. BELL ATLANTIC/GTE SHOULD ADOPT A UNIVERSAL "BEST PRACTICES" APPROACH TO DEMONSTRATE THAT THE PROPOSED MERGER IS CONSISTENT WITH THE PUBLIC INTEREST**

Allegiance appreciates Bell Atlantic/GTE's proposal to commit to a series of merger commitments based on those approved by the Commission in association with the SBC/Ameritech merger. Allegiance is disappointed, however, by Bell Atlantic/GTE's effort to maintain separate operations support systems ("OSS") and separate carrier-to-carrier performance plans in the Bell Atlantic and GTE territories. Permitting the companies to maintain separate wholesale systems and performance standards runs against the public interest, because such a result will virtually guarantee that the best practices of Bell Atlantic will not permeate GTE's wholesale operations.

To remedy in this deficiency, the Commission should require Bell Atlantic/GTE to take a best practices approach to carrier-to-carrier performance and OSS integration. Allegiance supports the adoption and implementation of the Bell Atlantic carrier-to-carrier performance plan and OSS standards throughout the combined region. The commitments proffered by Bell Atlantic/GTE for the Bell Atlantic territory are based on those approved by the Commission as part of its grant of section 271 authority to Bell Atlantic in New York. Because those standards are consistent with the requirements of section 271, including the section 271 public interest standard, those standards, if adopted throughout the combined Bell Atlantic/GTE territory would provide substantial support for a Commission ruling that the proposed merger is consistent with the public interest.

In an effort to address this argument in the Supplemental Filing, Bell Atlantic/GTE states “deploying common interfaces and business rules across the companies is both impracticable and prohibitively expensive.”<sup>12</sup> Interestingly, however, although OSS integration would be “prohibitively expensive,” Bell Atlantic/GTE claims “combining the [companies’] wireless business will produce significant cost savings and operation efficiencies.”<sup>13</sup> Indeed, Bell Atlantic/GTE touts that “the combination of the wireless business is expected to generate aggregate costs savings with a net present value of \$1.9 billion.”<sup>14</sup> Why it would be cost

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<sup>12</sup> Supplemental Filing, 21.

<sup>13</sup> *Id.*, 9.

<sup>14</sup> *Id.* Allegiance predicts that the combined company will realize similarly substantial cost savings through integrating other retail operations, including local exchange operations. Indeed, although Bell Atlantic/GTE downplays the retail local exchange benefits, a Bell Atlantic press release states “[a]s the nation’s largest local exchange carrier, and an emerging long distance provider, [Bell Atlantic/GTE] will be able to better serve its customers by using that size and scope to drive down costs and speed new services to market.” Bell Atlantic/GTE Press Release, July 28, 1998 (available at [http://www.bell-atl.com/invest/news/bel-gte\\_release.htm](http://www.bell-atl.com/invest/news/bel-gte_release.htm)). Moreover,



prohibitive for Bell Atlantic/GTE to unify its local exchange wholesale operations but beneficial to unify its wireless business – composed of Bell Atlantic, GTE, Vodafone, and AirTouch (purchased by Vodafone in 1999) – is unclear to Allegiance, and should raise Commission concerns.

Allegiance understands the difficulties associated with the integration of large companies, such as Bell Atlantic/GTE, and the particular difficulties associated with unifying OSS interfaces and carrier-to-carrier policies. To account for these difficulties, Allegiance would support a two-pronged approach to the implementation of Bell Atlantic's OSS interfaces and carrier-to-carrier policies throughout the combined territory. First, the combined company should implement the Bell Atlantic systems and policies in GTE's Pennsylvania and Virginia territories in accordance with the intervals approved by the Commission in the *SBC/Ameritech Order*. Second, for the remainder of the GTE territory, the Bell Atlantic best practices for OSS interfaces and carrier-to-carrier policies should be implemented in a time frame consistent with that of the integration of other Bell Atlantic/GTE business units, such as the various retail divisions. Bell Atlantic/GTE undoubtedly will make numerous public announcements regarding its integration milestones, and Allegiance submits news of its progress integrating its wholesale activities should be included in those announcements.

At bottom, reasonable public interest benefits from the proposed transactions should accrue to all consumers, including those that reside in GTE's local exchange service territory. The Commission should not permit Bell Atlantic/GTE pick and choose which consumers obtain the benefits of the merger, as doing so cuts directly against the public interest.

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"both GTE and Bell Atlantic have proven track records in successfully and quickly integrating business operations." *Id.*

**V. AN INDEPENDENT AUDIT IS NEEDED TO ENSURE THAT THE  
MERGER COMPLIES WITH SECTION 271 OF THE ACT**

The proposed Bell Atlantic/GTE transaction poses unique questions that implicate directly the in-region interLATA restrictions of section 271. As part of its Supplemental Filing, Bell Atlantic/GTE has provided the Commission with a fairly detailed plan explaining how it proposes to divest in-region interLATA facilities. The Supplemental Filing, however, provides no mechanism for determining whether Bell Atlantic/GTE will be in compliance with section 271, including any requirements the Commission may impose in this proceeding, at the time the merger closes. To ensure that compliance, the Commission should require Bell Atlantic/GTE to retain an independent, third-party auditor to certify that the combined company has divested all in-region interLATA facilities and services in accordance with section 271 and applicable Commission requirements.

The Commission recently approved a similar audit procedure in connection with its review of the SBC/Ameritech merger.<sup>15</sup> Specifically, SBC/Ameritech committed to hire an independent, third-party auditor, or auditors, acceptable to the Chief of the Common Carrier Bureau.<sup>16</sup> The auditor is responsible for reviewing SBC/Ameritech's compliance with the Commission's collocation rules and issuing an attestation report resulting in a positive opinion (with exceptions noted) regarding whether the terms and conditions of SBC/Ameritech's collocation offerings comply with Commission rules.<sup>17</sup> Bell Atlantic/GTE has committed to retaining an auditor for collocation compliance in accordance with the *SBC/Ameritech Order*,

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<sup>15</sup> *SBC/Ameritech Order*, ¶ 387.

<sup>16</sup> *Id.*, Appendix C ¶ 39.

<sup>17</sup> *Id.*

March 1, 2000

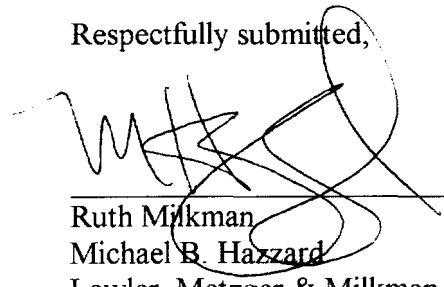
and Allegiance recommends that the Commission similarly require Bell Atlantic/GTE to retain an auditor to review and certify, by affidavit or similar formal statement, Bell Atlantic/GTE's compliance with section 271.

The auditor's report on Bell Atlantic/GTE's section 271 compliance should be submitted to the Commission prior to the merger's closing, rather than subsequent to closing.<sup>18</sup> Indeed, until such time as the independent, third-party auditor formally certifies that the applicants have completed the steps necessary to comply with section 271, the Commission should not permit the merger to close.

## VI. CONCLUSION

For the foregoing reasons, prior to approving this merger, the Commission should require Bell Atlantic/GTE to unify their wholesale operations consistent with the best practices of Bell Atlantic and retain an independent auditor to ensure that the combined company is in compliance with section 271 at the time of the merger.

Respectfully submitted,



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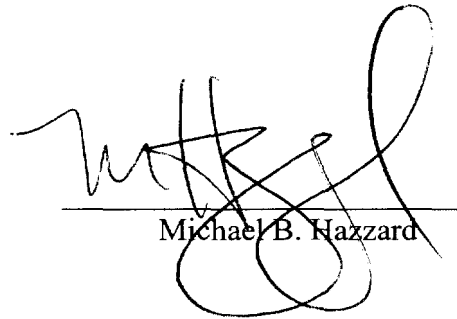
Dated: March 1, 2000

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<sup>18</sup> *Id.*, Appendix C, ¶¶ 40-41.

## **CERTIFICATE OF SERVICE**

I, Michael B. Hazzard, do hereby certify that on this day of March 1, 2000, I caused a copy of the foregoing Comments of Allegiance Telecom, Inc. to be served upon each of the parties listed on the attached Service List by messenger and first-class mail postage prepaid.



Michael B. Hazzard

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